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ENDO PHARMACEUTICALS INC. and
ENDO HEALTH SOLUTIONS INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

THE CITY AND COUNTY OF SAN FRANCISCO,
CALIFORNIA and THE PEOPLE OF THE STATE
OF CALIFORNIA, Acting by and through San
Francisco City Attorney DENNIS J. HERRERA,

Plaintiffs,

v.

PURDUE PHARMA L.P. et. al.,

Defendants.

Case No. 3:18-cv-07591-CRB

**STATUS REPORT REGARDING
DEFENDANTS ENDO
PHARMACEUTICALS INC. AND
ENDO HEALTH SOLUTIONS INC.'s
INVESTIGATION RELATED TO
DATA RESPONSIVE TO
INTERROGATORY NOS. 1-4**

Judges: Hon. Charles R. Breyer and Hon.
Jacqueline Scott Corley

Defendants Endo Pharmaceuticals Inc. and Endo Health Solutions Inc. (collectively, “Endo”) submit this status report regarding Endo’s efforts to identify and produce any additional data responsive to Plaintiff’s Interrogatory Nos. 1-4 in compliance with the Court’s Order Following June 16, 2021 Discovery Hearing (ECF No. 578), requiring in relevant part: “Endo shall submit a status update to the Court by **June 30, 2021** regarding the status of its investigation into data and other information potentially responsive to Plaintiff’s Interrogatory Nos. 1-4 and the expected date of completion.” *Id.* at 2.

I. ENDO’S PRODUCTIONS OF DATA RESPONSIVE TO INTERROGATORIES 1-4.

At the outset of this litigation, Endo identified the non-custodial data it understood to be responsive to Plaintiff’s Requests for Production and relevant to the issues in Plaintiff’s Complaint, including the means and manner that Endo promoted its Schedule II opioid medications to healthcare providers (“HCPs”). The data that Endo identified and produced included data related to sales calls made by Endo sales personnel on HCPs in California related to Opana and Opana ER, as logged by those sales personnel (the “Call Data File”). Endo also identified and produced data related to the physical promotional materials provided by Endo sales personnel when meeting with HCPs in California, as logged by those sales personnel (the “Materials Dropped Data File”). Endo produced the Call Data File and Materials Dropped Data File into the MDL on April 2, 2020, and they were available to Plaintiff as of that date. Endo identified those materials to Plaintiff at the outset of discovery in this matter on August 21, 2020. Endo directed Plaintiff to these data files in its responses to Interrogatory Nos. 1-4, served on January 22, 2021 (and amended on February 10, 2021).

On April 9, 2021, Plaintiff inquired about certain gaps in the Call Data File and Materials Dropped Data File that Endo had previously produced. Since that time, Endo’s e-discovery counsel (Redgrave LLP) has worked with Endo personnel and consultants who are searching Endo data sources to assess whether any additional sales representative call data (including materials dropped data) not previously produced can be located.

On May 7, 2021, the parties submitted a joint discovery letter brief to the Court relating to a number of interrogatories, including Interrogatory Nos. 1-4 (ECF No. 551). On May 14, 2021, the

1 Court entered its Order Re Interrogatory Responses and Custodians (ECF No. 561), requiring in
2 relevant part: “To the extent that Endo identifies additional responsive data, that data shall be
3 produced and Endo’s responses to Interrogatories Nos. 1-4 shall be supplemented by May 31, 2021.”
4 *Id.* at 2.

5 Endo collectively produced 22 files of additional data responsive to Interrogatory Nos. 1-4 on
6 May 7, 24, and 28, 2021, which it had located prior to May 31, 2021. Endo described these
7 productions in its May 28, 2021 Status Report (ECF No. 566) and the parties’ June 15, 2021 Joint
8 Status Update (ECF No. 571 at 10).

9 **II. ENDO’S CONTINUING INVESTIGATION.**

10 Endo has continued to hold weekly Zoom conferences with Plaintiff’s counsel to update
11 them on the status of Endo’s search of its Commercial Data Warehouse (“Endo CDW”) and other
12 locations for data related to detailing visits by sales representatives (“Call Data”) with HCPs (ECF
13 No. 571 at 10). Endo’s searches have been successful and Endo has produced or located the
14 following additional Call Data from the locations described below.

15 **A. Endo CDW**

16
17 Endo’s initial production of the Call Data File and the Materials Dropped Data File, as well
18 as its more recent May 24, 2021 supplemental production of Call Data, included data originally
19 collected from the Endo CDW. Endo has searched repeatedly and diligently for responsive data
20 within the Endo CDW during the course of the MDL and in this matter.

21 In its May 28, 2021 Status Report (ECF No. 566), Endo submitted the Declaration of Diana
22 Fasching describing Endo’s continued efforts to locate Call Data requested by Plaintiff in the Endo
23 CDW. (ECF No. 566-1). At that time, “Endo IT personnel and two outside consultants [had]
24 collectively spent approximately 75 hours since April 9, 2021, in their efforts to search the CDW and
25 assess whether data responsive to Interrogatories Nos. 1-4 is stored in the CDW.” Decl. of D.
26 Fasching, ¶ 11 (ECF No. 566-1). As of May 28, 2021, however, Endo reported that it “ha[d] not
27 located any data within the CDW responsive to Interrogatories 1-4 beyond what Endo has already
28 produced.” (ECF No. 566 at 3).

1 The Endo team continued to run SQL searches and conduct data analysis. (ECF No. 571 at
2 10). On June 11, 2021, Endo informed Plaintiff that it had located dropdown fields for “message
3 description” and “message name” data from 2013 and 2014 that previously had not been located. *Id.*
4 at 3-4, 10.

5 In the June 15, 2021 Joint Status Update (ECF No. 571), Endo reported the same to the
6 Court: “The Endo team is currently working to confirm the presence of ‘message description’ and
7 ‘message name’ data associated with calls for additional time periods and to generate reports of such
8 data.” *Id.* at 10.

9 During the parties’ June 23, 2021 Zoom conference, Endo informed Plaintiff that it
10 confirmed the presence of “message description” and “message name” data associated with calls for
11 additional time periods (beyond 2013 and 2014) and that Endo was in the process of preparing the
12 Call Data for production. Endo asked whether Plaintiff prefers to receive a jurisdiction-specific
13 formatted production limited to calls on California-based HCPs (similar to the April 2, 2020
14 production described above at p. 1) or a production of all of the additional Call Data Endo has
15 located with no restrictions by state or geography.

16 The Endo team has continued the iterative process involved in identifying and extracting
17 relevant data from the Endo CDW in an effort to provide the information available in the fields
18 identified above in a manner that can be correlated with Endo’s previous productions of Call Data.
19 Given the technical challenges encountered with the volume of data involved and the complexity of
20 the Endo CDW, these efforts likely will not lead to a perfectly correlated supplemental production.
21 However, the Endo team has been working to replicate the previous productions to the greatest
22 practicable extent with the additional information contained in the two fields described above.
23 Between May 28, 2021 and June 29, 2021, the Endo team has collectively spent approximately 133
24 hours searching the Endo CDW and attempting to correlate the recently located information with the
25 previously produced Call Data, which also involved approximately 117 hours of machine time.

26 During the parties’ June 30, 2021 Zoom conference, Endo followed up on the production
27 format question raised on June 23 and requested that Plaintiff accept this supplemental production of
28 Call Data in the format of an Access database. To date, Plaintiff has not responded to Endo’s

1 questions regarding production formats. Notwithstanding, Endo anticipates that it will make a
2 supplemental production of the Call Data extracted from the Endo CDW during the week of July 5,
3 2021.

4 As described above, for the past two weeks, Endo shifted its efforts from investigating
5 whether additional Call Data may be located in the Endo CDW to extracting the information
6 available in the “message description” and “message name” fields to prepare it for production.
7 Although Endo expects to resume searching the Endo CDW for other potentially responsive data
8 based on a limited number of outstanding searches to be performed, it is difficult to estimate a date
9 of final completion of Endo’s investigation. Based on the efforts expended and the investigation
10 performed to date, however, Endo currently does not expect to locate additional Call Data within the
11 Endo CDW. To the extent any additional Call Data is located, Endo will promptly advise Plaintiff
12 of its existence, produce it, and further supplement its interrogatory responses to the extent required.

13 **B. Production of SIF2008-2012 Database Data**

14
15 As noted above, Endo has also been searching other sources for Call Data. During the
16 parties’ June 30, 2021 Zoom conference, Endo informed Plaintiff that it located and is currently
17 preparing a production of Call Data containing additional fields of data for the period 2008 to 2012
18 (inclusive) entered into Endo’s former StayinFront customer relationship management (“CRM”)
19 database (“SIF2008-2012”). Because the SIF2008-2012 was located outside of the Endo CDW and
20 contains additional fields of data, Endo is preparing this Call Data for production. Barring any
21 technical issues, Endo will endeavor to make its production by the end of the week of July 12, 2021
22 subject to confirmation by Plaintiff as to whether it will accept a native format production in the
23 format of an Access database, and wants to receive a jurisdiction-specific production limited to calls
24 on California-based HCPs.

C. Production of Previously Produced Call Data from a Non-Opioid Matter

On June 14, 2021, Endo advised Plaintiff that it identified opioid product Call Data from 2002 to 2007 incidentally present in production volumes made to the government in 2008 and 2009 in an unrelated non-opioid government investigation involving Lidoderm (“Lidoderm Production Data”). In the June 15, 2021 Joint Status Update, Endo stated that and it “is working to try to prepare this data for production.” (ECF No. 571 at 10).

Endo produced the Lidoderm Production Data on June 21, 2021. During the parties’ June 23, 2021 status update call, Plaintiff acknowledged receipt of the production and did not identify any questions or issues regarding the production at that time.

D. Previously Collected Call Data from the Non-Opioid Matter

On June 25, 2021, Endo confirmed the presence of Call Data in a 2007 backup of its StayinFront CRM database (“SIF2007 Backup”) that was located on media maintained by a former eDiscovery vendor used in the government investigation involving Lidoderm (“Lidoderm Vendor Media”). Endo expects that there is substantial duplication between the data on the SIF2007 Backup and the Lidoderm Production Data. Endo currently is investigating whether there is non-duplicative responsive Call Data on the SIF2007 Backup or in other locations on the Lidoderm Vendor Media and will make reasonable efforts to produce non-duplicative, responsive Call Data if any is located. Endo cannot currently predict when Call Data, if any, from the SIF2007 Backup will be ready for production but will keep Plaintiff informed during the parties’ weekly Zoom conferences. Endo respectfully suggests that it provide an update on status of the assessment and potential production from the SIF2007 Backup in the parties’ Joint Status Update to be filed before the Status Conference scheduled for July 21, 2021 (or such other schedule as the Court may direct).¹

* * *

¹ Endo also located a data store (in the form of multiple hard drives) related to the Lidoderm document review database and productions that the vendor provided to Endo. Redgrave LLP has reviewed the directories from that data store and does not believe that the data Endo received from the vendor includes a copy of the full pre-2008 Call Data database (i.e., the StayinFront CRM system). Endo is investigating whether that data store contains any other responsive non-duplicative Call Data.

1 Endo has complied and continues to comply with its obligations to conduct a reasonable and
 2 diligent inquiry in an effort to identify information responsive to Plaintiff's discovery requests,
 3 including Interrogatory Nos. 1-4. Endo has produced additional data responsive to Interrogatory
 4 Nos. 1-4 and has provided regular updates to Plaintiff regarding its efforts to locate, extract, and
 5 produce additional Call Data. To the extent any additional Call Data is located, Endo will promptly
 6 produce it and further supplement its interrogatory responses to the extent required.

7
 8 DATED: June 30, 2021

Respectfully submitted,

9 By: /s/ Sean O. Morris

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CERTIFICATE OF SERVICE

I hereby certify that, on June 30, 2021, service of this document was accomplished pursuant to the Court's electronic filing procedures by filing this document through the ECF system.

Dated: June 30, 2021

By: /s/ Sean O. Morris
Sean O. Morris